

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-964 of 2005

Date	Order with signature(s) of Judge(s)
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Present:

Muhammad Ali Mazhar, J.
Abdul Maalik Gaddi, J.

ALM Enterprises (Pvt.) Ltd., & another	Petitioners
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Versus

Province of Sindh & another	Respondents
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30th March, 2017.

Mr. Muhammad Ahmer, Advocate for the Petitioners.

Mr. Sibtain Mehmood, A.A.G.

Muhammad Ali Mazhar, J. Through this constitution petition, the petitioner has sought declaration that Sindh Finance (Second Amendment) Ordinance, 2001 is unconstitutional. Further declaration has been sought that the respondents have not lawful authority to levy or collect any Infrastructure Cess, fee and charges on the goods including gold imported into or exported from Pakistan. By virtue of the Amended Sindh Finance (Second Amendment) Ordinance, 2001, in sub-clause (1) of Section 2, Cess for maintenance and development of infrastructure on goods at the rate of 0.5 percent of their value for carriage by road and smooth and safer movement in the province upon entering or before leaving the province from or for outside the country, through air or sea, was imposed in the manner as may be prescribed.

2. Learned counsel for the petitioners invited our attention to CMA No.25934 of 2013 filed under Section 151, CPC with which he attached the letter dated 08.11.2003 issued by the Section

Officer (Taxes), Secretary to Government of Sindh, Excise and Taxation Department, which communicates that the rate of Infrastructure Cess on gold and silver has substantially reduced by the Government of Sindh through Sindh Finance Act, 2003 with effect from 01.07.2003 and according to this letter written to the Additional Secretary, Ministry of Commerce, Government of Pakistan, Islamabad, the existing rate of 0.125% on C&F value is in field rather than 0.5%. Learned counsel also invited our attention to the Nazir's report submitted on 14.02.2017 in compliance of the order dated 26.01.2017 passed by this court. Nazir in his report pointed out that Special Savings Certificates in the sum of Rs.10,73,000/- (Rupees Ten Lac Seventy Three Thousand only) were deposited on 14.11.2005. Thereafter, some more Special Savings Certificates in the sum of Rs.65,000/- (Rupees Sixty Five Thousand only) were deposited on 11.03.2006 and finally, Defence Savings Certificates in the sum of Rs.8,10,000/- (Rupees Eight Lac Ten Thousand only) were deposited on 27.06.2007.

3. Learned counsel for the petitioner argued that the petitioners are duly authorized to import and export gold to and from Pakistan and during the course of their business, they have imported different consignments of gold from abroad in the month of July, 2005. He further submits that in terms of 16.08.2005, the petitioners have already been deposited three imports. Learned counsel for the petitioner in some of his arguments on the premise in terms of the letter dated 17.10.2001 issued by the Section Officer (Tax) to the Advocate General, Sindh Office in relation to the instant constitution petition, who requests that petition may be disposed of as levy through Sindh Finance (Second Amendment)

Ordinance, 2001 was substantially reduced in year 2003 and the quantum of Infrastructure Cess were reduced from 0.5% to 0.125%. Therefore, the petitioners' counsel does not want to proceed further. Learned A.A.G. has also no objection, if the quantum of tax is paid by the petitioner as according to percentage in the relevant period. This petition is disposed of in following terms:-

- (i) The Excise and Taxation Department will calculate the amount of Infrastructure Cess payable by the petitioners commensurate to the date of imports and rate of levy initially imposed by the Finance Act, in year 2001, which was subsequently reduced in year 2003. After proper calculation the same shall be placed before the Nazir of this court, who will supply copy to the counsel for the petitioner for verification purposes. Thereafter, the petitioner shall submit the Pay Order, which shall be made in the name of Excise and Taxation Department, as proposed by the learned A.A.G., equivalent to the amount of levy in the Nazir's Office that will be released in the Excise Department for identification and verification. After clearance of the liability, Nazir shall return original Special Savings Certificates to the petitioner on proper identification and verification.

JUDGE

JUDGE